



Department of Human Resources  
311 West Saratoga Street  
Baltimore MD 21201

## FIA ACTION TRANSMITTAL

Control Number: # 16-05

Effective Date: Upon Receipt

Issuance Date: September 25, 2015

**TO:** DIRECTORS, LOCAL DEPARTMENTS OF SOCIAL SERVICES  
DEPUTY/ASSISTANT DIRECTORS FOR FAMILY INVESTMENT  
FAMILY INVESTMENT SUPERVISORS AND ELIGIBILITY STAFF  
HEALTH OFFICERS, LOCAL HEALTH DEPARTMENTS  
LOCAL HEALTH DEPARTMENT ELIGIBILITY STAFF  
ELIGIBILITY DETERMINATION DIVISION STAFF

**FROM:** DEBBIE RUPPERT, EXECUTIVE DIRECTOR, DHMH/OES *Debbie Ruppert*  
ROSEMARY MALONE, EXECUTIVE DIRECTOR, FIA *Rosemary Malone*

**RE:** LONG-TERM CARE/WAIVER SERVICES – WHEN TO USE THE SRT  
DISABILITY DETERMINATION PROCESS

**PROGRAM AFFECTED:** MEDICAL ASSISTANCE

**ORIGINATING OFFICE:** OFFICE OF ELIGIBILITY SERVICES

**BACKGROUND:** This action transmittal addresses Long Term Care applicants who submit initial Medical Assistance (MA) applications to the Local Department of Social Services (LDSS) or Eligibility Determination Division (EDD) requesting Long-Term Care Services, including services through a Home and Community-Based Services (HCBS) Waiver program.

Specifically, the new guidance affects applicants who are under the age of 65 but at least 21 years of age and who, prior to the Affordable Care Act (ACA) of 2010, required either the State Review Team (SRT) or the Social Security Administration's (SSA) determination of disability.

With the implementation of health care reform, the number of SRT referrals has dropped significantly because many low-income uninsured individuals meet the expanded income standards for the new Modified Adjusted Gross Income (MAGI) eligibility categories. Persons under age 65 who qualify under the MAGI eligibility rules for adults (that is, their income is less than or equal to 138% of the Federal Poverty Level and they are not eligible for Medicare) can become community eligible and use the streamlined application process for MA-LTC.

**SUMMARY:** Before determining a person's financial eligibility for a long-term care coverage category or a HCBS Waiver program, the case manager must first determine

that the person **is considered to be institutionalized**, and meets all non-financial requirements under COMAR 10.09.24.05.

A person aged 21 or older is considered “institutionalized” when he/she:

- Resides in a licensed and certified Long-Term Care facility (LTCF);
- Has resided in an LTCF for a continuous period of at least 30 consecutive days or, if less than 30 consecutive days, is likely to remain there for 30 consecutive days; and,
- **Has a medical need for Long-Term Care (LTC) as certified by either:**
  - **the Utilization Control Agent (UCA) on the DHMH 257, or**
  - **the Authorization to Participate form for one of the HCBS Waiver programs.**

**ACTION REQUIRED:** SRT decisions are generally not needed for individuals who seek Long-Term Care Medical Assistance eligibility as the individual’s level of care must be determined by the UCA and not by a disability decision from SSA.

**There are two Medical Assistance rules that still require a determination of disability for LTC or HCBS Waiver program applicants now that ACA is in effect. When submitting SRT referrals for the following two situations, case managers should write “Special LTC” across the top of the referral.**

1. SRT decisions are needed for MA applicant/recipients who are not eligible for a disability determination from Social Security and who wish to preserve resources in a Special Needs Trust (SNT) to use for disability-related needs not covered by MA. This includes individuals older than 65 who wish to preserve resources by setting up an account with a Pooled Special Needs Trust (PSNT) entity. Federal law requires that the beneficiary of a SNT or PSNT be determined “disabled” under the Title XVI (SSI) rules. Social Security will not perform this review for individuals who are over 65, so if an aged individual applies for MA-LTC and discloses a PSNT on his or her application, and has not already received a determination from SRT, it is necessary to refer this individual to SRT and receive a determination of disability in order to treat the PSNT funds as non-countable in the LTC application.
2. SRT determinations are also needed to establish whether the adult child of a MA-LTC applicant/recipient is disabled for purposes of exemptions to the rules respecting home liens and transfer penalties. An MA-LTC applicant/recipient may transfer the family home without penalty to an adult disabled child, and MA Recoveries may not place a lien on the applicant/recipient’s home where the applicant/recipient’s adult disabled child resides. If the adult child is foreclosed from the SSA disability process, perhaps on the basis of age, or receiving survivors’ benefits from SSA, the State is required to make the disability determination for an individual who is NOT an applicant or recipient, in order to support the entitlement of the A/R under COMAR 10.09.24.15A-2(2)(c), 10.09.24.15A-3(3)(c).

For example, a mother gifts her house to her son, who claims to be disabled but does not currently receive any benefit from the Social Security Administration. The

mother's LTC application must count the Fair Market Value of her house unless the son is determined by the State Review Team to meet the SSA definition of disability.

**INQUIRIES:**

Please direct Medical Assistance policy questions the DHMH Division of Eligibility Policy at 410-767-1463 or 1-800-492-5231 (select option 2 and request extension 1463).

cc: DHMH Executive Staff  
DHR Executive Staff  
DHMH Management Staff  
DHR Management Staff  
Constituent Services  
DHR Help Desk